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DR. AHMED

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

BRENT LUIS GONZALEZ,

Plaintiff,

v.

Z. AHMED, M.D., JOSEPH  
CHUDY, M.D. (Chief Medical  
Officer CTF-Soledad), et al.,

Defendants.

Case No. 5:10-cv-05654-LHK

**ANSWER TO PLAINTIFF'S FIRST  
AMENDED COMPLAINT BY DR.  
AHMED; AND DEMAND FOR JURY  
TRIAL**

Judge: Hon. Lucy H. Koh

For an answer to plaintiff's First Amended Complaint (Doc. #16), filed on April 12, 2011, defendant Dr. Ahmed<sup>1</sup> ("defendant") admits, denies and avers as follows:

**EXHAUSTION OF ADMINISTRATIVE REMEDIES**

1. In response to Section I of plaintiff's First Amended Complaint, defendant admits that there is an inmate appeal or administrative remedy process available at California Training Facility, and at all other California correctional facilities. Defendant admits plaintiff has filed an appeal concerning the facts contained in his complaint relating to defendant. Defendant denies plaintiff's

<sup>1</sup> Defense counsel expects to represent defendants Dr. Chudy and Dr. Sepulveda in this case, after they have been served and request representation, and thus cannot answer on Dr. Chudy and Dr. Sepulveda's behalves.

1 appeal process is complete. Except as admitted herein, defendant denies any  
2 remaining allegations for lack of information and belief.

### 3 **PARTIES**

4 2. In response to Section II of plaintiff's First Amended Complaint,  
5 defendant admits plaintiff is currently incarcerated at California State Prison –  
6 Solano in Vacaville, California. Defendant admits he and defendants Dr.  
7 Sepulveda and Dr. Chudy were physicians at California Training Facility at the  
8 time of the alleged incident. Except as admitted herein, defendant denies any  
9 remaining allegations for lack of information and belief.

### 10 **STATEMENT OF CLAIM**

11 3. In response to paragraph 1 of Section III of plaintiff's First Amended  
12 Complaint, defendant lacks sufficient information to admit or deny plaintiff's  
13 allegations that plaintiff was experiencing severe abdominal pain. Defendant  
14 denies any remaining allegations for lack of information and belief.

15 4. In response to paragraph 2 of Section III of plaintiff's First Amended  
16 Complaint, defendant lacks sufficient information to admit or deny plaintiff's  
17 allegations that plaintiff's requests to see a doctor were not honored. Defendant  
18 denies any remaining allegations for lack of information and belief.

19 5. In response to paragraphs 3-9 of Section III of plaintiff's First  
20 Amended Complaint, defendant denies that he refused to treat plaintiff or provide  
21 him with medical care. Defendant denies that he had a sarcastic, dismissive, and  
22 mocking attitude when he examined plaintiff. Defendant denies that he violated  
23 any of plaintiff's rights. Defendant denies any remaining allegations for lack of  
24 information and belief.

25 6. In response to paragraph 10 of Section III of plaintiff's First Amended  
26 Complaint, defendant denies that plaintiff was forced to leave his office without  
27 being examined. Defendant lacks sufficient information to admit or deny plaintiff's  
28 allegations that plaintiff was told by a correctional officer that there was nothing

1 that he could do about answering defendant allegedly refusing to examine plaintiff.  
2 Defendant denies any remaining allegations for lack of information and belief.

3 7. In response to paragraphs 11-12 of Section III of plaintiff's First  
4 Amended Complaint, defendant lacks sufficient information to admit or deny  
5 plaintiff's allegations that plaintiff gave another request for medical services to a  
6 registered nurse on July 21, 2008 after his condition worsened. Defendant denies  
7 any remaining allegations for lack of information and belief.

8 8. In response to paragraphs 13-15 of Section III of plaintiff's First  
9 Amended Complaint, defendant lacks sufficient information to admit or deny  
10 plaintiff's allegations that on July 22, 2008, plaintiff gave a further request for  
11 medical services to a nurse named "Roy." Defendant denies that he refused to treat  
12 plaintiff or provide him with medical care on July 22, 2008. Defendant denies any  
13 remaining allegations for lack of information and belief.

14 9. In response to paragraphs 16-22 of Section III of plaintiff's First  
15 Amended Complaint, defendant admits that on July 24, 2008, plaintiff was taken to  
16 Natividad Medical Center. Defendant lacks sufficient information to admit or deny  
17 plaintiff's allegations that plaintiff was informed that his appendix had ruptured  
18 weeks before and that it was infected, and that plaintiff was in extreme pain and  
19 very ill. Defendant denies any remaining allegations for lack of information and  
20 belief.

21 10. In response to paragraph 23 of Section III of plaintiff's First Amended  
22 Complaint, defendant lacks sufficient information to admit or deny plaintiff's  
23 allegations that on August 1, 2008, plaintiff told Dr. Kalisher that he did not want to  
24 be treated by answering defendant because he feared for his life. Defendant denies  
25 any remaining allegations for lack of information and belief.

26 11. In response to paragraph 24 of Section III of plaintiff's First Amended  
27 Complaint, defendant admits that plaintiff lodged an inmate appeal relating to  
28

1 defendant's alleged refusal to treat him. Defendant denies any remaining  
2 allegations for lack of information and belief.

3 12. In response to paragraphs 25-26 of Section III of plaintiff's First  
4 Amended Complaint, defendant lacks sufficient information to admit or deny  
5 plaintiff's allegations that he continued to tell Dr. Kalisher on subsequent visits that  
6 he did not want to be treated by answering defendant because he feared for his life.  
7 Defendant denies any remaining allegations for lack of information and belief.

8 13. In response to paragraphs 27-28 of Section III of plaintiff's First  
9 Amended Complaint, defendant lacks sufficient information to admit or deny  
10 plaintiff's allegations that plaintiff was threatened by a nurse if he refused to be  
11 treated by answering defendant. Defendant denies that he caused plaintiff to miss  
12 his first follow-up appointment at Natividad Medical Center. Defendant denies any  
13 remaining allegations for lack of information and belief.

14 14. In response to paragraph 29 of Section III of plaintiff's First Amended  
15 Complaint, defendant denies that he told plaintiff that the he did not want to see  
16 him on July 22, 2008, because he was too tired. Defendant denies that he failed to  
17 respond to plaintiff's inquiry about his follow-up appointment at Natividad Medical  
18 Center. Defendant denies any remaining allegations for lack of information and  
19 belief.

20 15. In response to paragraph 30 of Section III of plaintiff's First Amended  
21 Complaint, defendant lacks sufficient information to admit or deny plaintiff's  
22 allegations that defendant Dr. Sepulveda told plaintiff that he must remain under  
23 answering defendant's care when defendant Dr. Sepulveda interviewed plaintiff  
24 with respect to his inmate appeal. Defendant denies any remaining allegations for  
25 lack of information and belief.

26 16. In response to paragraph 31-32 of Section III of plaintiff's First  
27 Amended Complaint, defendant lacks sufficient information to admit or deny  
28 plaintiff's allegations that plaintiff remained in continuous pain. Defendant lacks

1 sufficient information to admit or deny plaintiff's allegations that defendant Dr.  
2 Chudy was made aware of answering defendant's actions and plaintiff's concerns,  
3 but failed to rectify the problem. Defendant denies any remaining allegations for  
4 lack of information and belief.

5 17. In response to paragraph 33-34 of Section III of plaintiff's First  
6 Amended Complaint, defendant lacks sufficient information to admit or deny  
7 plaintiff's allegations that plaintiff continues to suffer pain in the abdominal region.  
8 Defendant denies that he delayed plaintiff's treatment. Defendant denies any  
9 remaining allegations for lack of information and belief.

#### 10 **RELIEF**

11 18. In response to the allegations in Section IV of plaintiff's First  
12 Amended Complaint, defendant acknowledges that plaintiff seeks monetary  
13 damages, but denies that plaintiff is entitled to damages or any other relief.  
14 Defendant denies he caused plaintiff any damages or violated his constitutional  
15 rights. Defendant denies any remaining allegations contained therein for lack of  
16 information and belief.

17 19. In response to paragraph 35(A) of section titled "Claims for Relief" in  
18 plaintiff's First Amended Complaint, defendant denies that he refused to provide  
19 plaintiff with medical treatment. Defendant denies that he was deliberately  
20 indifferent to plaintiff's serious medical needs under the Eighth Amendment.  
21 Defendant denies that he violated the Fourteenth Amendment. Defendant denies  
22 any remaining allegations for lack of information and belief.

23 20. In response to paragraph 35(B) of section titled "Claims for Relief" in  
24 plaintiff's First Amended Complaint, defendant denies that he refused to provide  
25 plaintiff with medical treatment. Defendant denies that he was deliberately  
26 indifferent to plaintiff's serious medical needs under the Eighth Amendment.  
27 Defendant denies that he violated the Fourteenth Amendment. Defendant denies  
28 any remaining allegations for lack of information and belief.

1           21. In response to paragraph 35(C) of section titled “Claims for Relief” in  
2 plaintiff’s First Amended Complaint, defendant denies that he threatened plaintiff  
3 with disciplinary action if plaintiff lodged an inmate appeal. Defendant denies that  
4 he violated the First Amendment. Defendant denies any remaining allegations for  
5 lack of information and belief.

6           22. In response to paragraph 35(D) of section titled “Claims for Relief” in  
7 plaintiff’s First Amended Complaint, defendant denies that he retaliated against  
8 plaintiff by delaying plaintiff’s medical treatment. Defendant denies that he  
9 violated the First, Eighth and Fourteenth Amendments. Defendant denies any  
10 remaining allegations for lack of information and belief.

11           23. In response to paragraph 35(E) of section titled “Claims for Relief” in  
12 plaintiff’s First Amended Complaint, defendant lacks sufficient information to  
13 admit or deny plaintiff’s allegations that defendant Dr. Sepulveda violated the  
14 Eighth and Fourteenth Amendments. Defendant denies any remaining allegations  
15 for lack of information and belief.

16           24. In response to paragraph 35(F) of section titled “Claims for Relief” in  
17 plaintiff’s First Amended Complaint, defendant lacks sufficient information to  
18 admit or deny plaintiff’s allegations that defendant Dr. Chudy violated the Eighth  
19 and Fourteenth Amendments. Defendant denies any remaining allegations for lack  
20 of information and belief.

21           25. In response to paragraph, 35(G)-(I) of section titled “Claims for  
22 Relief” in plaintiff’s First Amended Complaint, defendant denies that he failed to  
23 provide timely medical treatment to plaintiff. Defendant denies that his actions  
24 constituted negligence and medical malpractice. Defendant denies any remaining  
25 allegations for lack of information and belief.

26           26. In response to paragraph 35(J)-(K) of section titled “Claims for Relief”  
27 in plaintiff’s First Amended Complaint, defendant lacks sufficient information to  
28 admit or deny plaintiff’s allegations that defendants Dr. Sepulveda and Dr. Chudy

1 were negligent because they failed to properly supervise answering defendant.  
2 Defendant denies any remaining allegations for lack of information and belief.

3 **AFFIRMATIVE DEFENSES**

4 AS SEPARATE AND AFFIRMATIVE DEFENSES, answering defendant  
5 alleges as follows:

6 **FIRST AFFIRMATIVE DEFENSE**

7 27. Plaintiff's First Amended Complaint fails to state a claim upon which  
8 relief can be granted. Plaintiff's First Amended Complaint also fails to state a  
9 claim against defendant.

10 **SECOND AFFIRMATIVE DEFENSE**

11 28. Defendant denies that plaintiff has been deprived of any rights,  
12 privileges, or immunities guaranteed by the laws of the United States or by the laws  
13 of the State of California.

14 **THIRD AFFIRMATIVE DEFENSE**

15 29. At all relevant times, defendant acted within the scope of discretion,  
16 with due care, and good faith fulfillment of responsibilities pursuant to applicable  
17 statutes, rules and regulation, within the bounds of reason, and with the good faith  
18 belief that their actions comported with all applicable federal and state laws.  
19 Defendant therefore asserts his qualified immunity from liability.

20 **FOURTH AFFIRMATIVE DEFENSE**

21 30. Plaintiff has suffered no actual injury due to defendant's conduct.

22 **FIFTH AFFIRMATIVE DEFENSE**

23 31. Defendant asserts that this action may be subject to the doctrine of  
24 collateral estoppel or res judicata due to the pendency of any related state court  
25 proceedings arising from the same incident or due to any duplicated federal claims.

26 **SIXTH AFFIRMATIVE DEFENSE**

27 32. Defendant is not vicariously liable for acts of subordinates or subject  
28 to liability under the doctrine of respondeat superior.

**SEVENTH AFFIRMATIVE DEFENSE**

33. Any and all happenings, events, damages and injuries, if any, referred to in the First Amended Complaint were proximately caused and contributed by plaintiff's own conduct in that he failed to exercise ordinary care at the alleged times and places.

**EIGHTH AFFIRMATIVE DEFENSE**

34. Plaintiff's own conduct estops him from claiming the damages alleged in the First Amended Complaint.

**NINTH AFFIRMATIVE DEFENSE**

35. Plaintiff has failed to allege in his First Amended Complaint sufficient facts to state a claim for compensatory or punitive damages for any action taken by defendant in her individual or official capacities.

**TENTH AFFIRMATIVE DEFENSE**

36. Plaintiff's claims are barred or limited by the provisions of the Prison Litigation Reform Act including the requirement to show physical injury to recover for emotional distress.

**ELEVENTH AFFIRMATIVE DEFENSE**

37. The Complaint is barred by the provisions of the Prison Litigation Reform Act based on plaintiff's failure to exhaust his administrative remedies within the prison system prior to filing his lawsuit.

**TWELFTH AFFIRMATIVE DEFENSE**

38. There is no liability for failure to provide a prison, jail or penal correctional facility, sufficient equipment, personnel or facilities therein. (Gov. Code, § 845.2.)

**THIRTEENTH AFFIRMATIVE DEFENSE**

39. There is no liability for any injury or damages, if any there were, caused by the failure to furnish or obtain medical care for any prisoner. (Gov. Code, § 845.6.)

**FOURTEENTH AFFIRMATIVE DEFENSE**

40. Because the First Amended Complaint is couched in conclusory terms, answering defendant cannot fully anticipate all affirmative defenses that may be applicable to this action. Accordingly, the right to assert additional affirmative defenses, if and to the extent that such affirmative defenses are applicable, is hereby reserved.

**FIFTEENTH AFFIRMATIVE DEFENSE**

41. Plaintiff did not comply with the Government Tort Claims Act; thus, his state law claims are barred.

**DEMAND FOR JURY TRIAL**

Defendant hereby demands a trial before a jury on all issues presented by plaintiff's First Amended Complaint triable to a jury.

WHEREFORE, Defendant prays that:

1. Judgment be rendered in favor of defendant and against plaintiff;
2. Plaintiff takes nothing by the First Amended Complaint;
3. Defendant be awarded costs of suit incurred herein; and
4. Defendant be awarded such other and further relief as the Court may deem necessary and proper.

Dated: May 3, 2011

BURKE, WILLIAMS & SORENSEN, LLP

By: /s/ Susan E. Coleman

Susan E. Coleman  
Martin Kosla

Attorneys for Defendant  
DR. AHMED

**PROOF OF SERVICE**

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

*(Brent Gonzalez v. Dr. Ahmed and Joseph Chudy, Case No. 5:10-cv-05654-LHK)*

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 444 South Flower Street, Suite 2400, Los Angeles, California 90071.

On May 3, 2011, I served the document described as:

**1. ANSWER TO PLAINTIFF'S FIRST AMENDED COMPLAINT BY DR. AHMED; AND DEMAND FOR JURY TRIAL**

on the interested parties in this action by placing true copies thereof enclosed in sealed envelopes addressed as follows:

Brent Luis Gonzalez, V-77321  
California State Prison-Solano  
Housing: 10-116 L  
P. O. Box 4000  
Vacaville, CA 95696-04000

*PLAINTIFF IN PRO SE*

☒ (BY MAIL) I caused such envelope to be deposited in the mail at Los Angeles, California. The envelope was mailed with postage thereon fully prepaid. I placed such envelope with postage thereon prepaid in the United States mail at Los Angeles, California. I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. postal service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the United States of America, that the above is true and correct.

Executed on May 3, 2011 at Los Angeles, California.

  
\_\_\_\_\_  
Terri Mehra